IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 14553 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKORE SHANKARJI HEMATAJI SARDARJI - Applicant(s)
Versus
STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

MR HEMAL A DAVE for Applicant(s) : 1,
MR AY KOGJE, APP for Respondent(s) : 1,
MR MEHUL SHARAD SHAH for Respondent(s) : 2,4 - 6.
UNSERVED-EXPIRED (R) for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/05/2007

ORAL JUDGMENT

1. This application has been filed by the original complainant seeking cancellation of bail order

dated 22nd November, 2006 passed by the Additional Sessions Judge and Presiding Officer, 5th Fast Track Court, Mehsana, in Criminal Misc. Application No.859/2006 filed by respondents nos. 2 to 6 herein.

2. In the order learned Judge observed that the accused was charged for having committed offence punishable under section 326 of Indian Penal Code. The accused are involved in agricultural activities. They are permanent residents of Mehsana District and owned immovable property in Kasa village. Learned Judge was therefore, of the opinion that they are unlikely to abscond if released on bail. Learned Judge has also considered the nature of injuries caused on the complainant and the part of the body where such injuries was found. Learned Judge also recorded that Mudammal has already been recovered. He was therefore, of the opinion that accused persons should be released on bail however, on stringent conditions. Accordingly, respondents nos. 2 to 6 herein were released on bail on certain conditions.

3. The complainant has filed this application and prayed for cancellation of the bail only on the ground that accused had misled the learned Sessions Judge on the material aspect of the matter. It is stated that the affidavit was filed before the learned Sessions Judge by the

accused to the effect that the complainant has already been discharged from the hospital whereas in fact, the complainant was in hospital right till 23rd November, 2006. Primarily, on this ground bail granted by learned Additional Sessions Judge are sought to be cancelled.

4. Having heard learned advocates appearing for the parties, I do not find this is a fit case where cancellation of bail should be ordered. The accused are enjoying liberty pursuant to bail granted by the learned Sessions Judge since November, 2006. Neither in this application nor in any other manner there is any allegations of misuse of liberty by the accused. This Court would not be justified in cancelling the bail granted by the Sessions Court unless there are compelling reasons and circumstances. It may be true that affidavit filed by the accused was not entirely accurate on the status of injured being discharged from hospital. It is clarified that I find no necessity to opine on the exact date of discharge of the applicant from the hospital. In facts of this case, I do not find that this is a factor which by itself would warrant cancellation of bail. The possibility of the accused having inaccurate information cannot be ruled out. Secondly, the complainant was discharged on the very next date i.e. on 23rd November, 2006. Thirdly, this is not the main ground on which Learned Sessions Judge granted

bail to the accused. Fourthly, I find that learned Sessions Judge has given cogent reasons for releasing the accused on bail.

5. Considering all these aspect of the matter, I find no merits in this application and same is rejected. Rule is discharged.

(Akil Kureshi,J.)

(raghu)